

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**COPY RECEIVED**

APR 21 2008

**U.S. ATTORNEY'S SDNY**

NADEEM CHOUDHARY (A# 89 357 396),

Plaintiff,

Case No

v.

MICHAEL B. MUKASAY, Attorney General  
The United States of America, MICHAEL  
CHERTOFF, Secretary of the U.S. Department of  
Homeland Security, ROBERT S. MUELLER, III,  
Director, Federal Bureau of Investigations  
DR. EMILIO T. GONZALEZ, Director, U.S.  
Citizenship and Immigration Services ANDREA  
QUARANTILLO, District Director, Bureau of  
Citizenship and Immigration Services, New York  
District Office

Defendants.

**PLAINTIFF'S ORIGINAL COMPLAINT  
FOR WRIT IN THE NATURE OF MANDAMUS**

**COME NOW**, NADEEM CHOUDHARY, Plaintiff in the above-styled and numbered cause, and for cause of action would show unto the Court to following:

1. This action is brought against the Defendants to compel action on an application for lawful permanent resident status properly filed by the Plaintiff over one year ago. The application was filed and remains within the jurisdiction of the Defendants, who have improperly withheld action on said application to Plaintiff's detriment.

**PARTIES**

2. Plaintiff, NADEEM CHOUDHARY, is a native citizen of Pakistan. Plaintiff first entered the United States on or about April 1, 2000. He had filed for adjustment of status and immediate relative status on January 1, 2007. The immediate relative petition was approved on April 18, 2007. His adjustment of status petition remains adjudicated to this day.
3. Defendant, MICHAEL B. MUKASEY, is the Attorney General of the United States of America, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of

the Department. More specifically, the Attorney General is granted “sole authority to naturalize persons as citizens of the United States.” 8 U.S.C. §1421.

4. Defendant, MICHAEL CHERTOFF, is Secretary of the Department of Homeland Security, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the Department of Homeland Security, including employees of the USCIS. 8 USC §1103(a). More specifically, he is responsible for the adjudication of applications for adjustment of status filed pursuant to §245 of the Immigration and Nationality Act (INA), 8 USC §1255.
5. Defendant, ROBERT S. MUELLER, III, is the Director of the Federal Bureau of Investigations, and this action is brought against him in his official capacity. The Federal Bureau of Investigations (FBI) is the investigative arm of the U.S. Department of Justice, authorized under Title 28, Section 533 of the U.S. Code to conduct investigations against terrorists and foreign intelligence threats and to uphold and enforce the criminal laws of the United States. In furtherance of that mission, the FBI is currently authorized to conduct security background investigations concerning aliens applying for various benefits under the Immigration and Nationality Act
6. Defendant, DR. EMILIO T. GONZALEZ, is the Director of the United States Citizenship and Immigration Services, in charge with ultimate authority over all operations of the USCIS, said operations including, but not limited to, the adjudication of parties for naturalization.
7. Defendant, ANDREA QUARANTILLO, is the District Director of the New York Office of the USCIS generally charged with supervisory authority over all operations of the USCIS within her District with certain specific exceptions not relevant here. 8 CFR §103.1(g)(2)(ii)(B). As will be shown, Defendant District Director is the official with whom Plaintiffs’ application and motion for lawful permanent resident status were properly filed.

### JURISDICTION

8. Jurisdiction in this case is proper under 28 USC §§1331 and 1361, 5 USC §701 *et seq.*, and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

### VENUE

9. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant resides and where a substantial part of the events or omissions giving rise to Plaintiff’s claim occurred. More specifically, Plaintiff’s application for lawful permanent resident status was properly filed and, to Plaintiff’s knowledge, remains pending with the New York USCIS District Director.

### EXHAUSTION OF REMEDIES

10. Plaintiff has made numerous inquiries via telephone and in person at USCIS into the status of his case. All inquiries are to no avail.

### CAUSE OF ACTION

11. Plaintiff, as above alleged did, in fact, file a petition for Adjustment of Status (I-485) on or about January 1, 2007 based on an approved Immediate Relative Petition with the New York District Office as required by regulation. Plaintiff has complied with all requests and requirements of the USCIS. Additionally, Plaintiff is still married to the sponsoring spouse.
12. Plaintiff's application for Adjustment of Status has now remained adjudicated for over one year since the time of filing. Upon information and belief, the delay in adjudication is solely the result of pending security clearances. The USCIS has announced policy whereby applications for Adjustment of Status that have been pending for security clearances for more than six months will be approved without the completion of said security clearances.
13. Plaintiff has been unable to return to Pakistan during the adjudication of his application despite the critical health of mother.
14. Defendants have sufficient information to determine Plaintiff's eligibility pursuant to applicable requirements. To date, said applications have not been adjudicated. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance with the law. Defendants willfully, and unreasonably, have delayed in and have refused to, adjudicate Plaintiff's application for over a year, thereby depriving him of the right to a decision on his status and the peace of mind to which Plaintiff is entitled.
15. A Writ of Mandamus will lie where the Petitioner can satisfy a three tier test: (1) that the claim is clear and certain; (2) that the Respondent's official duty to act is ministerial and "so plainly prescribed as to be free of doubt" and (3) no other remedy is available at law. See *Barron v. Reich*, 3 F.3d 1370, 1374 (9 Cir 1994.) Although the Secretary of the Department of Homeland Security and his agent the District Director of the New York office of the USCIS are vested with certain discretionary powers concerning the ultimate decision in an application for adjustment of status, the adjudication of the petition is a ministerial act in which the Attorney General is without discretion. The failure to act upon said petition will give rise to a Writ of Mandamus. 28 U.S.C. §1361
16. Plaintiff has been greatly damaged by the failure of defendants to act in accord with their duties under the law. His employment authorization is tied to his status as an applicant for permanent residency, and is limited to increments not to exceed one

year. 8 CFR §274a.12(c)(9). Therefore, he has been forced to repeatedly apply (and pay) for extensions of employment authorization, which is required by law to continually insure his work eligibility. INA §274A(a)(2), 8 USC §1324a(a)(2). Plaintiff has been further damaged by simply being deprived of the status of lawful permanent residents during the pendency of his application.

17. The Defendants, in violation of the Administrative Procedures Act, 5 USC §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff's application and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiffs' case.
18. Plaintiff has made numerous status inquiries in an attempt to secure adjudication of their applications, all to no avail. Accordingly, Plaintiff has been forced to retain the services of an attorney to pursue the instant action.

### PRAYER

WHEREFORE, in view of the arguments and authority noted herein, Plaintiff respectfully prays that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:

- (a) Requiring Defendants to adjudicate Plaintiff's application for Adjustment of Status;
- (b) Awarding Plaintiff reasonable attorney's fees; and
- (c) Granting such other relief at law and in equity as justice may require.

Respectfully submitted,



MITCHELL C. ZWAIK

Attorney for Plaintiff

3900 Veterans Memorial Highway

Suite 120

Bohemia, NY 11716

(631) 588-4040

**Supporting Documentation**

- Exhibit A**     Receipt Notice for I-485 (Application to Register Permanent Residence);
- Exhibit B**     Request for Initial Interview; Interview Scheduled for April 18, 2007;
- Exhibit C**     Notice of Approval of Relative Immigrant Visa Petition dated April 18, 2007;
- Exhibit D**     Medical note from Major Dr. Rizwan Haider, plaintiff's mother's doctor.

# THE UNITED STATES OF AMERICA

Receipt Number: MSC-07-095-13938		Case Type: I-485 - Application to Register Permanent Residence or Adjust Status
Received Date: January 01, 2007	Priority Date:	Applicant: A089357396 CHOUDHARY, NADEEM
Notice Date: January 05, 2007	Page 1 OF 1	ASC Code: 3

MITCHELL ZWAIK  
3900 VETERANS MEMORIAL HWY STE 120  
BOHEMIA NY 11716

Notice Type: Receipt Notice  
Amount Received: \$1,395.00

The above application has been received. **Please notify us immediately if any of the above information is incorrect.** If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

## BIOMETRICS-

The next step is to have your biometrics taken, if required, at a US Citizenship and Immigration Services (USCIS) Application Support Center (ASC).

## PLEASE NOTE-

USCIS WILL SCHEDULE YOUR BIOMETRICS APPOINTMENT. You will be receiving an appointment notice with a specific time, date and place where you will have your fingerprints and/or photos taken.

## WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

**If you do not bring this letter and photo identification, we cannot process you.**

**Please bring a copy of all receipt notices received from USCIS in relation to your current application for benefits.**

## CASE STATUS -

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the United States Citizenship and Immigration Services website at [www.USCIS.gov](http://www.USCIS.gov) where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U. S. Citizenship and Immigration Services

P.O. Box 648005

Lee's Summit, MO 64064

National Customer Service Center: 1-800-375-5283





## THE UNITED STATES OF AMERICA

## REQUEST FOR APPLICANT TO APPEAR FOR INITIAL INTERVIEW

NOTICE DATE

February 23, 2007

CASE TYPE

FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS

A#

A 089 357 396

APPLICATION NUMBER

MSC0709513938

RECEIVED DATE

January 01, 2007

PRIORITY DATE

January 01, 2007

PAGE

1 of 1

NADEEM AHMAD CHOUDHARY  
c/o MITCHELL ZWAIK  
3900 VETERANS MEMORIAL HWY STE 120  
BOHEMIA NY 11716



You are hereby notified to appear for the interview appointment, as scheduled below, for the completion of your Application to Register Permanent Residence or Adjust Status (Form I-485) and any supporting applications or petitions. **Failure to appear for this interview and/or failure to bring the below listed items will result in the denial of your application. (8 CFR 103.2(b)(13))**

**Who should come with you?**

- ☐ If your eligibility is based on your marriage, your husband or wife must come with you to the interview.
- ☐ If you do not speak English fluently, you should bring an interpreter.
- ☐ Your attorney or authorized representative may come with you to the interview.
- ☐ If your eligibility is based on a parent/child relationship and the child is a minor, the petitioning parent and the child must appear for the interview.

**\*NOTE:** Every adult (over 18 years of age) who comes to the interview must bring Government-issued photo identification, such as a driver's license or ID card, in order to enter the building and to verify his/her identity at the time of the interview. You do not need to bring your children unless otherwise instructed. Please be on time, but do not arrive more than 45 minutes early. We may record or videotape your interview.

**YOU MUST BRING THE FOLLOWING ITEMS WITH YOU:** (Please use as a checklist to prepare for your interview)

- ☐ This Interview Notice and your Government issued photo identification.
- ☐ A completed medical examination (Form I-693) and vaccination supplement in a sealed envelope (unless already submitted).
- ☐ A completed Affidavit(s) of Support (Form I-864) with all required evidence, including the following, for each of your sponsors (unless already submitted):
  - ☐ Federal Income Tax returns and W-2's, or certified IRS printouts, for the past 3 years;
  - ☐ Letters from each current employer, verifying current rate of pay and average weekly hours, and pay stubs for the past 2 months;
  - ☐ Evidence of your sponsor's and/or co-sponsor's United States Citizenship or Lawful Permanent Resident status.
- ☐ All documentation establishing your eligibility for Lawful Permanent Resident status.
- ☐ Any immigration-related documentation ever issued to you, including any Employment Authorization Document (EAD) and any Authorization for Advance Parole (Form I-512).
- ☐ All travel documents used to enter the United States, including Passports, Advance Parole documents (I-512) and I-94s (Arrival/Departure Document).
- ☐ Your Birth Certificate.
- ☐ Your petitioner's Birth Certificate and your petitioner's evidence of United States Citizenship or Lawful Permanent Resident Status.
- ☐ If you have children, bring a Birth Certificate for each of your children.
- ☐ If your eligibility is based on your marriage, in addition to your spouse coming to the interview with you, bring:
  - ☐ A certified copy of your Marriage Document issued by the appropriate civil authority.
  - ☐ Your spouse's Birth Certificate and your spouse's evidence of United States Citizenship or Lawful Permanent Resident status;
  - ☐ If either you or your spouse were ever married before, all divorce decrees/death certificates for each prior marriage/former spouse;
  - ☐ Birth Certificates for all children of this marriage, and custody papers for your children and for your spouse's children not living with you;
- ☐ Supporting evidence of your relationship, such as copies of any documentation regarding joint assets or liabilities you and your spouse may have together. This may include: tax returns, bank statements, insurance documents (car, life, health), property documents (car, house, etc.), rental agreements, utility bills, credit cards, contracts, leases, photos, correspondence and/or any other documents you feel may substantiate your relationship.
- ☐ Original and copy of each supporting document that you submitted with your application. Otherwise, we may keep your originals for our records.
- ☐ If you have ever been arrested, bring the related Police Report and the original or certified Final Court Disposition for each arrest, even if the charges have been dismissed or expunged. If no court record is available, bring a letter from the court with jurisdiction indicating this.
- ☐ A certified English translation for each foreign language document. The translator must certify that s/he is fluent in both languages, and that the translation in its entirety is complete and accurate.

**YOU MUST APPEAR FOR THIS INTERVIEW.** If an emergency, such as your own illness or a close relative's hospitalization, prevents you from appearing, call the U.S. Citizenship and Immigration Services (USCIS) National Customer Service Center at 1-800-375-5283 as soon as possible. Please be advised that rescheduling will delay processing of application/petition, and may require some steps to be repeated. It may also affect your eligibility for other immigration benefits while this application is pending.

If you have questions, please call the USCIS National Customer Service Center at 1-800-375-5283 (hearing impaired TDD service is 1-800-767-1833).

PLEASE COME TO: U.S. Citizenship and Immigration Services  
26 FEDERAL PLAZA  
8TH FLOOR ROOM 800  
NEW YORK NY 10278

ON: Wednesday, April 18, 2007  
AT: 10:30 AM

DEPARTMENT OF HOMELAND SECURITY  
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

NOTICE OF APPROVAL OF RELATIVE IMMIGRANT VISA PETITION

NAME AND ADDRESS OF APPLICANT/PETITIONER

Marie Catherine Choudhary  
29 North Main Street, Apt. 1-R  
Ellenville, NY 12428

NAME OF BENEFICIARY Nadeem Ahmad Choudhary	
CLASSIFICATION 201(b) (Spouse)	FILE NO. A89 357 396
DATE PETITION FILED 01/01/07	DATE OF APPROVAL OF PETITION 04/18/07

DATE: April 18, 2007

The visa petition you filed has been approved. The beneficiary for whom you filed has been given the appropriate classification. Note the approval gives no assurance that the beneficiary will automatically be found eligible for visa issuance, admission to the United States or adjustment to lawful permanent resident status. Whether the beneficiary gets a visa is decided only when an application is made to a consular officer; whether the beneficiary is admitted or adjusts status in the United States is decided only when an application is made to an immigration officer.

1. ☐ YOUR PETITION TO CLASSIFY THE BENEFICIARY AS AN IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN HAS BEEN FORWARDED TO THE UNITED STATES CONSULATE AT \_\_\_\_\_. THIS COMPLETES ALL ACTION BY THIS SERVICE ON THE PETITION. THE UNITED STATES CONSULATE, WHICH IS PART OF THE DEPARTMENT OF STATE, WILL CONTACT THE BENEFICIARY AND GIVE INSTRUCTIONS ABOUT GETTING A VISA. QUESTIONS ABOUT GETTING A VISA SHOULD BE MADE TO THE UNITED STATES CONSUL.
2. ☐ IF YOU BECOME A NATURALIZED CITIZEN OF THE UNITED STATES AND AN IMMIGRANT VISA HAS NOT YET BEEN ISSUED TO THE BENEFICIARY NOTIFY THIS OFFICE IMMEDIATELY, GIVING THE DATE OF YOUR NATURALIZATION. IF THE PETITION WAS IN BEHALF OF YOUR SON OR DAUGHTER, PLEASE ADVISE WHETHER THAT PERSON IS STILL UNMARRIED. THIS INFORMATION MAY BE HELPFUL TO THE BENEFICIARY IN GETTING A VISA FASTER.
3. ☐ YOUR PETITION FOR PREFERENCE CLASSIFICATION HAS BEEN FORWARDED TO THE UNITED STATES CONSULATE AT \_\_\_\_\_. THIS COMPLETES ALL ACTION BY THE SERVICE. THIS SERVICE DOES NOT ISSUE VISAS IN OTHER COUNTRIES. VISAS ARE ISSUED ONLY BY UNITED STATES CONSULS WHO ARE EMPLOYEES OF THE UNITED STATES DEPARTMENT OF STATE. WHEN THE BENEFICIARY'S TURN IS REACHED ON THE VISA WAITING LIST, THE UNITED STATES CONSUL WILL CONTACT THE BENEFICIARY AND GIVE INSTRUCTIONS ABOUT GETTING A VISA. VISAS ARE ISSUED ACCORDING TO THE DATE THE PETITION WAS FILED. QUESTIONS ABOUT GETTING A VISA SHOULD BE ADDRESSED TO THE UNITED STATES CONSUL.
4. ☐ YOUR PETITION SAYS THAT THE BENEFICIARY IS IN THE UNITED STATES AND WILL APPLY TO BECOME A LAWFUL PERMANENT RESIDENT. THE ENCLOSED APPLICATION (FORM I-485) SHOULD BE COMPLETED AND SUBMITTED BY THE BENEFICIARY WITHIN 30 DAYS. (IF THE BENEFICIARY PREVIOUSLY SUBMITTED SUCH AN APPLICATION AND HAD IT RETURNED, IT SHOULD BE RESUBMITTED WITHIN 30 DAYS.)
5. ☒ THE BENEFICIARY WILL BE INFORMED OF THE DECISION MADE ON THE PENDING APPLICATION TO BECOME A LAWFUL PERMANENT RESIDENT.
6. ☐ THE PETITION SAYS THAT THE BENEFICIARY IS IN THE UNITED STATES AND WILL APPLY TO BECOME A LAWFUL PERMANENT RESIDENT. THE BENEFICIARY MAY NOT APPLY TO BECOME A PERMANENT RESIDENT, HOWEVER UNTIL A VISA NUMBER IS AVAILABLE. INFORMATION ABOUT VISA NUMBERS MAY BE OBTAINED FROM THE UNITED STATES DEPARTMENT OF STATE, BUREAU OF CONSULAR AFFAIRS, WASHINGTON, DC.
7. ☐ ORIGINAL DOCUMENTS SUBMITTED IN SUPPORT OF YOUR PETITION UNACCOMPANIED BY COPIES HAVE BEEN MADE A PERMANENT PART OF THE PETITION. ANY OTHERS ARE BEING RETURNED WITH THIS FORM.

8. ☒ REMARKS.

CC: Toni Nicolo, Esq.  
3900 Veteran's Memorial Highway, Suite 120  
Bohemia, NY 11716

VERY TRULY YOURS

Andrea J. Quarantillo  
DISTRICT DIRECTOR  
NEW YORK DISTRICT



# Major Dr. Rizwan Haider

M.B.B.S. (A.M.C)  
FCPS (Pak.)  
Medical Specialist  
Mirza Hospital  
KUTCHERY ROAD GUJRAT.  
PH: OFF: 3517877, RES: 3582186  
Wireless: 0533-007067

میجر ڈاکٹر رضوان حیدر

ایم۔ بی۔ بی۔ ایس (اے۔ ایم۔ سی)  
ایف۔ سی۔ پی۔ ایس (پاک)

میڈیکل سپیشلسٹ

مرزا ہسپتال پکھری روڈ گجرات

فون: 3517877: کلینک

3582186: رہائش

ناغہ روز اتوار  
جمعہ 11:30 سے 12:30 بجے

Mr Annia Bili is  
suffering from Chronic Hepatitis C -  
she is under my treatment since  
for last 02 weeks. She is  
in a critical state.

DR. RIZWAN HAIDER  
Medical Specialist

28/2/08

UNITED STATES DEPARTMENT JUSTICE  
SOUTHERN DISTRICT OF NEW YORK

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NADEEM CHOUDHARY,

Plaintiff,

-against-

MICHAEL B. MUKASEY, Attorney General of the United States of America,  
MICHAEL CHERTOFF, Secretary of the U.S. Dept. of Homeland Security,  
ROBERT S. MUELLER, III, Director, Federal Bureau of Investigations,  
DR. EMILIO T. GONZALEZ, Director, U.S. Citizenship and Immigration  
Services, and ANDREA QUARANTILLO, District Director, U.S. Citizenship &  
Immigration Services, New York District Office,

Defendants.

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**WRIT OF MANDAMUS**

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**MITCHELL C. ZWAIK**

Attorney for Plaintiff

Office and Post Office Address

3900 Veterans Memorial Highway, Suite 120

Bohemia, NY 11716

(631) 588-4040

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